

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CR-324-BO

UNITED STATES OF AMERICA

v.

JOSEPH EVELYN WING

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ORDER


This cause comes before the Court on defendant's motion for a certificate of appealability. On May 12, 2009, defendant was sentenced to a total sentence of 540 months' imprisonment following his plea of guilty to charges of mailing threatening communications and being a felon in possession of a firearm. [DE 35]; 18 U.S.C. §§ 876(c); 922(g) and 924. By order entered March 23, 2017, the Court, Fox, J. presiding, denied defendant's motion to change his name on his judgment of conviction and to order the Bureau of Prisons to recognize his newly adopted religious name. [DE 67]. Defendant filed the instant motion on May 1, 2017, and the matter was subsequently reassigned to the undersigned for further proceedings.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001).

Although the Court is not convinced that a certificate of appealability is required in this instance as defendant's motion was not filed or treated as a habeas petition, *see* 28 U.S.C. §

2253(c)(1); Rule 11, Rules Governing Section 2255 Cases, defendant has not made a sufficient showing that the assessment of any constitutional claim or procedural ruling was debatable. The Court has previously considered defendant's request to follow one, non-binding case regarding a name change and has found the reasoning of other cases more persuasive. Defendant has failed to demonstrate that a certificate of appealability is either necessary or appropriate, and his motion [DE 68] is therefore DENIED.

SO ORDERED, this 25 day of January, 2018.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE